

117TH CONGRESS  
1ST SESSION

# H. R. 3703

To facilitate the installation of broadband infrastructure, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2021

Ms. ESHOO (for herself, Mr. MCKINLEY, and Mr. DELGADO) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To facilitate the installation of broadband infrastructure, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Nationwide Dig Once  
5       Act of 2021”.

6       **SEC. 2. DIG ONCE FOR BROADBAND INFRASTRUCTURE DE-**  
7                   **PLOYMENT.**

8       (a) DEFINITIONS.—In this section:

9                   (1) APPROPRIATE STATE AGENCY.—The term  
10          “appropriate State agency” means a State govern-

1       mental agency that is recognized by the executive  
2       branch of the State as having the experience nec-  
3       essary to evaluate and facilitate the installation and  
4       operation of broadband infrastructure within the  
5       State.

6                 (2) BROADBAND.—The term “broadband” has  
7       the meaning given the term “advanced telecommuni-  
8       cations capability” in section 706 of the Tele-  
9       communications Act of 1996 (47 U.S.C. 1302).

10               (3) BROADBAND CONDUIT.—The term  
11       “broadband conduit” means a conduit or innerduct  
12       for fiber optic cables (or successor technology of  
13       greater quality and speed) that supports the provi-  
14       sion of broadband.

15               (4) BROADBAND INFRASTRUCTURE.—The term  
16       “broadband infrastructure” means any buried or un-  
17       derground facility and any wireless or wireline con-  
18       nection that enables the provision of broadband.

19               (5) BROADBAND PROVIDER.—The term  
20       “broadband provider” means an entity that provides  
21       broadband to any person, including, with respect to  
22       such entity—

23                         (A) a corporation, company, association,  
24                         firm, partnership, nonprofit organization, or  
25                         any other private entity;

(B) a State or local broadband provider;

(C) an Indian Tribe; and

(D) a partnership between any of the enti-

ties described in subparagraphs (A), (B), and

(C).

6 (6) COVERED HIGHWAY CONSTRUCTION

## 7 PROJECT.—

(A) IN GENERAL.—The term “covered highway construction project” means, without regard to ownership of a highway, a project funded under title 23, United States Code, and administered by a State department of transportation to construct a new highway or an additional lane for an existing highway, to reconstruct an existing highway, or new construction, including construction of a paved shoulder.

(B) EXCLUSIONS.—The term “covered

highway construction project” excludes any

## project—

(j) awarded before the date on which

regulations required under subsection (b)

take effect;

(ii) that does not include work beyond

the edge of pavement or current paved

shoulder;

(iii) that is less than a mile in length;

2 or

3 (iv) that is—

(I) a project primarily for resurfacing, restoration, rehabilitation, or maintenance;

(II) a bicycle, pedestrian, transportation alternatives, sidewalk, recreational trails, or safe routes to school project;

11 (III) an operational improvement  
12 (as such term is defined in section  
13 101 of title 23, United States Code);

(IV) a project primarily to install signage; or

16 (V) a culvert project.

17                             (7) DIG ONCE REQUIREMENT.—The term “dig  
18                             once requirement” means a requirement designed to  
19                             reduce the cost and accelerate the deployment of  
20                             broadband by minimizing the number and scale of  
21                             repeated excavations for the installation and mainte-  
22                             nance of broadband conduit or broadband infrastruc-  
23                             ture in rights-of-way.

1       the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).

3                     (9) NTIA ADMINISTRATOR.—The term “NTIA  
4       Administrator” means the Assistant Secretary of  
5       Commerce for Communications and Information.

6                     (10) PROJECT.—The term “project” has the  
7       meaning given such term in section 101 of title 23,  
8       United States Code.

9                     (11) SECRETARY.—The term “Secretary”  
10      means the Secretary of Transportation.

11                  (12) STATE.—The term “State” has the meaning given such term in section 401 of title 23, United States Code.

14                  (13) STATE OR LOCAL BROADBAND PROVIDER.—The term “State or local broadband provider” means a State or political subdivision thereof, or any agency, authority, or instrumentality of a State or political subdivision thereof, that provides broadband to any person or facilitates the provision of broadband to any person in such State.

21                  (b) DIG ONCE REQUIREMENT.—Not later than 12 months after the date of enactment of this Act, to facilitate the installation of broadband infrastructure, the Secretary shall issue such regulations as may be necessary to ensure that each State that receives funds under chap-

1 ter 1 of title 23, United States Code, complies with the  
2 following provisions:

3                     (1) BROADBAND PLANNING AND NOTICE.—The  
4 State department of transportation, in consultation  
5 with appropriate State agencies, shall—

6                         (A) review existing State broadband plans,  
7 including existing dig once requirements of the  
8 State, municipal governments incorporated  
9 under State law, and Indian tribes within the  
10 State, to determine opportunities to coordinate  
11 covered highway construction projects occurring  
12 within or across highway rights-of-way with  
13 planned broadband infrastructure projects;

14                         (B) identify a broadband coordinator, who  
15 may have additional responsibilities in the State  
16 department of transportation or in another  
17 State agency, that is responsible for facilitating  
18 the broadband infrastructure right-of-way ef-  
19 forts within the State; and

20                         (C) establish a process—

21                             (i) for the registration of broadband  
22 providers that seek to be included in the  
23 advance notification of, and opportunity to  
24 participate in, broadband infrastructure

1 right-of-way facilitation efforts within the  
2 State; and

14 (2) COORDINATION AND COMPLIANCE.—

(B) WEBSITE.—A State department of transportation shall be considered to meet the

1 requirements of paragraph (1)(C) if the State  
2 publishes on a public website—

3 (i) the State transportation improve-  
4 ment program on at least an annual basis;  
5 and

6 (ii) covered highway construction  
7 projects within the highway right-of-way  
8 for which Federal funding is expected to be  
9 obligated in the subsequent fiscal year.

10 (C) COORDINATION.—The State depart-  
11 ment of transportation, in consultation with ap-  
12 propriate State agencies, shall by rule or regu-  
13 lation establish a process for a broadband pro-  
14 vider to commit to installing broadband conduit  
15 or broadband infrastructure as part of any cov-  
16 ered highway construction project.

17 (D) APPROPRIATE STATE AGENCY.—In  
18 lieu of the State department of transportation,  
19 at the discretion of the State, an appropriate  
20 State agency, in consultation with the State de-  
21 partment of transportation, may carry out the  
22 requirements of paragraph (1).

23 (3) REQUIRED INSTALLATION OF BROADBAND  
24 CONDUIT.—

(A) IN GENERAL.—The State department of transportation shall install broadband conduit, in accordance with this paragraph (except as described in subparagraph (F)), as part of any covered highway construction project, unless a broadband provider has committed to install broadband conduit or broadband infrastructure as part of such project in a process described under paragraph (2)(C).

(B) INSTALLATION REQUIREMENTS.—In installing broadband conduit or broadband infrastructure as part of a covered highway construction project, the State department of transportation shall ensure that—

(i) installation pursuant to this paragraph of broadband conduit, broadband infrastructure, and means or points of access to such conduit or infrastructure (such as poles, hand holes, manholes, pull tape, or ducts) shall provide for the current and future safe operation of the traveled way, is consistent with part 645 of title 23, Code of Federal Regulations, and any accommodation policies of the State under such part to reasonably enable deployment of

1                   such conduit, infrastructure, and means or  
2                   points of access, and any Damage Preven-  
3                   tion and Underground Facilities Protection  
4                   or related requirements of the State;

5                   (ii) an appropriate number of  
6                   broadband conduits, as determined in con-  
7                   sultation with the appropriate State agen-  
8                   cies, are installed along the right-of-way of  
9                   a covered highway construction project to  
10                  accommodate multiple broadband pro-  
11                  viders, with consideration given to the  
12                  availability of existing broadband conduits;

13                  (iii) the size of each broadband con-  
14                  duit is consistent with industry best prac-  
15                  tices, consistent with the requirements of  
16                  part 645 of title 23, Code of Federal Regu-  
17                  lations, and sufficient to accommodate an-  
18                  ticipated demand, as determined in con-  
19                  sultation with the appropriate State agen-  
20                  cies;

21                  (iv) any hand holes and manholes nec-  
22                  essary for fiber access and pulling with re-  
23                  spect to such conduit are placed at inter-  
24                  vals consistent with standards determined  
25                  in consultation with the appropriate State

1           agencies (which may differ by type of road,  
2           topologies, and rurality) the requirements  
3           of part 645 of title 23, Code of Federal  
4           Regulations, and other applicable safety re-  
5           quirements;

6                 (v) each broadband conduit installed  
7           pursuant to this paragraph includes a pull  
8           tape and is capable of supporting fiber  
9           optic cable placement techniques consistent  
10          with best practices and the requirements of  
11          part 645 of title 23, Code of Federal Regu-  
12          lations;

13                 (vi) broadband conduit is placed at a  
14          depth consistent with requirements of the  
15          covered highway construction project and  
16          best practices and that, in determining the  
17          depth of placement, consideration is given  
18          to the location of existing utilities and  
19          cable separation requirements of State and  
20          local electrical codes; and

21                 (vii) installation of broadband conduit  
22          shall not preclude the installation of other  
23          specific socially, environmentally, or eco-  
24          nomically beneficial uses of the right-of-

1 way, such as planned energy transmission  
2 or renewable energy generation projects.

3 (C) PROGRAMMATIC REVIEW.—The State  
4 department of transportation may make deter-  
5 minations on the implementation of the require-  
6 ments described in subparagraph (B) on a pro-  
7 grammatic basis.

8 (D) ACCESS.—

9 (i) IN GENERAL.—The State depart-  
10 ment of transportation shall ensure that  
11 any requesting broadband provider has ac-  
12 cess to each broadband conduit installed by  
13 the State pursuant to this paragraph, on a  
14 competitively neutral and nondiscrim-  
15 inatory basis and in accordance with State  
16 permitting, licensing, leasing, or other  
17 similar laws and regulations.

18 (ii) SOCIALLY BENEFICIAL USE.—The  
19 installation of broadband conduit as part  
20 of a covered highway construction project  
21 shall be considered a socially-beneficial use  
22 of the right-of-way under section 156(b) of  
23 title 23, United States Code.

24 (iii) IN-KIND COMPENSATION.—The  
25 State department of transportation may

1                   negotiate in-kind compensation with any  
2                   broadband provider requesting access to  
3                   broadband conduit installed under the pro-  
4                   visions of this paragraph.

5                   (iv) SAFETY CONSIDERATIONS.—The  
6                   State department of transportation shall  
7                   provide for a process for a broadband pro-  
8                   vider to safely access to the highway right-  
9                   of-way during installation and on-going  
10                  maintenance of the broadband conduit and  
11                  broadband infrastructure, including a traf-  
12                  fic control safety plan.

13                  (v) COMMUNICATION.—A broadband  
14                  provider with access to the conduit in-  
15                  stalled pursuant to this subsection shall  
16                  notify, and receive permission from, the  
17                  relevant agencies of State responsible for  
18                  the installation of such broadband conduit  
19                  prior to accessing any highway or highway  
20                  right-of-way, in accordance with applicable  
21                  Federal requirements.

22                  (E) TREATMENT OF PROJECTS.—Notwith-  
23                  standing any other provision of law, broadband  
24                  conduit and broadband infrastructure installa-  
25                  tion projects installed by a State under this

1           paragraph shall comply with section 113(a) of  
2           title 23, United States Code.

3           (F) WAIVER AUTHORITY.—

4               (i) IN GENERAL.—A State department  
5               of transportation may waive the required  
6               installation of broadband conduit for part  
7               or all of any covered highway construction  
8               project under this paragraph if, in the de-  
9               termination of the State department of  
10              transportation—

11                   (I) broadband infrastructure, ter-  
12                   restrial broadband infrastructure, aer-  
13                   ial broadband fiber cables, or  
14                   broadband conduit is present near a  
15                   majority of the length of the covered  
16                   highway construction project;

17                   (II) installation of terrestrial or  
18                   aerial broadband fiber cables associ-  
19                   ated with the covered highway con-  
20                   struction project is more appropriate  
21                   for the context or a more cost-effic-  
22                   tive means to facilitate broadband  
23                   service to an area not adequately  
24                   served by broadband and such instal-  
25                   lation is present or planned;

(IV) the installation of broadband conduit associated with the covered highway construction project is not reasonably expected to be utilized or connected to future broadband infrastructure in the 20 years following the date on which such determination is made, as determined by the State department of transportation, in consultation with appropriate State agencies and potentially affected local governments and Indian tribes;

(VI) there exists a circumstance involving force majeure; or

(VII) the installation of conduit is not appropriate based on other relevant factors established by the Secretary in consultation with the NTIA Administrator through regulation.

(ii) CONTENTS OF WAIVER.—A waiver authorized under this subparagraph shall—

(I) identify the covered highway construction project; and

(II) include a brief description of the determination of the State for issuing such waiver.

(iii) AVAILABILITY OF WAIVER.—Notification of a waiver authorized under this subparagraph shall be made publicly available, such as on a public website of the State department of transportation described in paragraph (2)(B).

(iv) WAIVER DETERMINATION.—

(I) IN GENERAL.—The State department of transportation shall be responsible for the waiver determination described under this paragraph, consistent with the regulation issued

1 pursuant to this subsection, and may  
2 grant a programmatic waiver for cat-  
3 egories of projects excluded under this  
4 subparagraph.

(4) PRIORITY.—If a State provides for the installation of broadband infrastructure or broadband conduit in the right-of-way of a covered highway construction project, the State department of transportation, along with appropriate State agencies, shall carry out appropriate measures to ensure that an existing broadband provider is afforded access that is non-discriminatory, competitively neutral, and equal in opportunity, as compared to other broadband providers, with respect to the program under this subsection.

23 (c) GUIDANCE FOR THE INSTALLATION OF  
24 BROADBAND CONDUIT.—The Secretary, in consultation  
25 with the NTIA Administrator, shall issue guidance for

1 best practices related to the installation of broadband con-  
2 duit as described in subsection (b)(2) and of conduit and  
3 similar infrastructure for intelligent transportation sys-  
4 tems (as such term is defined in section 501 of title 23,  
5 United States Code) that may utilize broadband conduit  
6 installed pursuant to subsection (b)(2).

7 (d) CONSULTATION.—

8 (1) IN GENERAL.—In issuing regulations re-  
9 quired by this subsection or to implement any part  
10 of this section, the Secretary shall consult—  
11 (A) the NTIA Administrator;  
12 (B) the Federal Communications Commis-  
13 sion;  
14 (C) State departments of transportation;  
15 (D) appropriate State agencies;  
16 (E) agencies of local governments respon-  
17 sible for transportation and rights-of-way, utili-  
18 ties, and telecommunications and broadband;  
19 (F) Indian tribes;  
20 (G) broadband providers; and  
21 (H) manufacturers of optical fiber, con-  
22 duit, pull tape, and related items.

23 (2) BROADBAND USERS.—The Secretary shall  
24 ensure that the entities consulted under subpara-  
25 graphs (C) through (F) of paragraph (1) include en-

1       ties that have expertise with rural areas and popu-  
2       lations with limited access to broadband infrastruc-  
3       ture.

4                 (3) BROADBAND PROVIDERS.—The Secretary  
5       shall ensure that the entities consulted under sub-  
6       paragraph (G) of paragraph (1) include entities that  
7       provide broadband to rural areas and populations  
8       with limited access to broadband infrastructure.

9                 (e) OVERSIGHT.—

10                 (1) IN GENERAL.—The Secretary shall periodi-  
11       cally review compliance with the regulations issued  
12       pursuant to this section and ensure that State waiv-  
13       er determinations are consistent with such regula-  
14       tions.

15                 (2) EFFICIENT REVIEW.—The review described  
16       under paragraph (1) may be carried out through the  
17       risk-based stewardship and oversight program de-  
18       scribed under section 106(g) of title 23, United  
19       States Code.

20                 (3) EFFECT OF SUBSECTION.—Nothing in this  
21       subsection shall affect or discharge any oversight re-  
22       sponsibility of the Secretary specifically provided for  
23       under title 23, United States Code, or any other  
24       Federal law.

25                 (f) ADDITIONAL PROVISIONS.—

## 1 (1) APPLICABILITY.—

(A) IN GENERAL.—The portion of the regulation issued pursuant to subsection (b) relating to the provisions under paragraph (3) of such subsection shall not take effect until a source of dedicated funding for the installation and long term maintenance of broadband conduit described in subsection (g)(2) is established.

17 (2) RULES OF CONSTRUCTION.—

1           erty right or easement necessary for such  
2           installation.

3           (B) NO REQUIREMENT FOR INSTALLATION  
4           OF MOBILE SERVICES EQUIPMENT.—Nothing in  
5           this section shall be construed to require a  
6           State, a municipal government incorporated  
7           under State law, or an Indian Tribe to install  
8           or allow for the installation of equipment essen-  
9           tial for the provision of commercial mobile serv-  
10          ices (as defined in section 332(d) of the Com-  
11          munications Act of 1934 (47 U.S.C. 332(d)))  
12          or commercial mobile data service (as defined in  
13          section 6001 of the Middle Class Tax Relief  
14          and Job Creation Act of 2012 (47 U.S.C.  
15          1401)), other than broadband conduit and asso-  
16          ciated equipment described in paragraph  
17          (3)(B).

18           (3) RELATION TO STATE DIG ONCE REQUIRE-  
19          MENTS.—Nothing in subsections (b), (c), (d), or (e)  
20          or any regulations issued pursuant to subsection (b)  
21          shall be construed to alter or supersede any provi-  
22          sion of a State law or regulation that provides for  
23          a dig once requirement that includes similar or more  
24          stringent requirements to the provisions of sub-

1       sections (b), (c), (d), or (e) and any regulations pro-  
2       mulgated under subsection (b).

3       (g) DIG ONCE FUNDING TASK FORCE.—

4               (1) ESTABLISHMENT.—The Secretary and the  
5       NTIA Administrator shall jointly establish an inde-  
6       pendent task force on funding the nationwide dig  
7       once requirement described in this section to be  
8       known as the “Dig Once Funding Task Force”  
9       (hereinafter referred to as the “Task Force”).

10          (2) DUTIES.—The duties of the Task Force  
11       shall be to—

12               (A) estimate the annual cost for imple-  
13       menting, administering, and maintaining a na-  
14       tionwide dig once requirement;

15               (B) propose and evaluate options for fund-  
16       ing a nationwide dig once requirement described  
17       in this section that includes—

18                       (i) a discussion of the role and poten-  
19       tial share of costs of—

20                               (I) the Federal Government;

21                               (II) State and local governments  
22       and Indian tribes; and

23                               (III) broadband providers install-  
24       ing broadband conduit or broadband  
25       infrastructure under this section;

13 (C) propose a cost-based model fee sched-  
14 ule for a State to charge a broadband provider  
15 to access and use conduit installed by such  
16 State pursuant to this section that—

22 (ii) may vary by topography, location,  
23 type of road, rurality, and other factors;  
24 and

(iii) may consider financial and market incentives for expanding broadband infrastructure.

4 (3) REPORTS.—

5 (A) INTERIM REPORT AND BRIEFING.—

6           Not later than 9 months after the appointment  
7           of Members to the Task Force under paragraph  
8           (4)(D), the Task Force shall—

19 (4) MEMBERS.—

22 (i) 2 co-chairs described in subpara-  
23 graph (B);

24 (ii) 6 members jointly appointed by  
25 the Speaker and minority leader of the

1 House of Representatives, in consultation  
2 with the respective Chairs and Ranking  
3 Members of—

(I) the Committee on Transportation and Infrastructure of the House of Representatives;

(B) Co-CHAIRS.—The Task Force shall be co-chaired by the Secretary and the NTIA Ad-

1 ministrator, or the designees of the Secretary  
2 and NTIA Administrator.

3 (C) COMPOSITION.—The Task Force shall  
4 include at least—

5 (i) 1 representative from a State de-  
6 partment of transportation;

7 (ii) 1 representative from a local gov-  
8 ernment;

9 (iii) 1 representative from an Indian  
10 tribe;

11 (iv) 1 representative from a  
12 broadband provider;

13 (v) 1 representative from a State or  
14 local broadband provider;

15 (vi) 1 representative from a labor  
16 union; and

17 (vii) 1 representative from a public in-  
18 terest organization.

19 (D) APPOINTMENT DEADLINE.—Members  
20 shall be appointed to the Task Force not later  
21 than 60 days after the date of enactment of  
22 this Act.

23 (E) TERMS.—Members shall be appointed  
24 for the life of the Task Force. A vacancy in the  
25 Task Force shall not affect the powers of the

1           Task Force and the vacancy shall be filled in  
2           the same manner as the initial appointment was  
3           made.

4           (5) CONSULTATIONS.—In carrying out the du-  
5           ties required under this subsection, the Task Force  
6           shall consult, at a minimum—

7                 (A) the Federal Communications Commis-  
8                 sion;

9                 (B) agencies of States including—

10                     (i) State departments of transpor-  
11                     tation; and

12                     (ii) appropriate State agencies;

13                 (C) agencies of local governments respon-  
14                 sible for transportation and rights-of-way, utili-  
15                 ties, and telecommunications and broadband;

16                 (D) Indian tribes;

17                 (E) broadband providers and other tele-  
18                 communications providers;

19                 (F) labor unions; and

20                 (G) State or local broadband providers and  
21                 Indian tribes that act as broadband providers.

22           (6) ADDITIONAL PROVISIONS.—

23                 (A) EXPENSES FOR NON-FEDERAL MEM-  
24                 BERS.—Non-Federal members of the Task  
25                 Force shall be allowed travel expenses, includ-

1                   ing per diem in lieu of subsistence, at rates au-  
2                   thorized for employees under subchapter I of  
3                   chapter 57 of title 5, United States Code, while  
4                   away from the homes or regular places of busi-  
5                   ness of such members in the performance of  
6                   services for the Task Force.

7                   (B) STAFF.—Staff of the Task Force shall  
8                   comprise detailees with relevant expertise from  
9                   the Department of Transportation and the Na-  
10                  tional Telecommunications and Information Ad-  
11                  ministration, or another Federal agency that  
12                  the co-chairpersons consider appropriate, with  
13                  the consent of the head of the Federal agency,  
14                  and such detailees shall retain the rights, sta-  
15                  tus, and privileges of the regular employment of  
16                  such detailees without interruption.

17                  (C) ADMINISTRATIVE ASSISTANCE.—The  
18                  Secretary and NTIA Administrator shall pro-  
19                  vide to the Task Force on a reimbursable basis  
20                  administrative support and other services for  
21                  the performance of the functions of the Task  
22                  Force.

1                   (7) TERMINATION.—The Task Force shall ter-  
2                   minate not later than 90 days after submission of  
3                   the final report required under paragraph (3)(B).

